

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

## ZACHARY AUGUSTUS SMULSKI,

Defendant.

No. CR16-239RSL

**ORDER GRANTING A  
CONTINUANCE OF TRIAL**

This matter came before the court upon the motion of counsel for the defendant, requesting a continuance of the trial and the setting of a new cutoff date for pretrial motions. Having considered the files and records herein, including the declaration of counsel filed in support of the motion and the waiver of speedy trial executed by the defendant, and the response of the government, the court has concluded that the motion is meritorious and should, in the exercise of its discretion, be granted. Therefore,

**THE COURT FINDS AND ORDERS AS FOLLOWS:**

The indictment, filed on September 1, 2016, contains five counts. Counts 1 through 3 charge that the defendant devised a scheme to defraud his employer and a third party financing entity, in violation of 18 U.S.C. §1343 (wire fraud), in that he arranged for funds provided by the financing entity to be transferred into an account or accounts of an entity other than his employer, with which he was associated, in breach of fiduciary duties and with intent to defraud. Counts 4 and 5 charge that the defendant committed money-laundering, in violation of 18 U.S.C.

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1 §1957, in that he transferred funds from one account in the name of the entity other than his  
2 employer to a different account in the name of the entity other than his employer (Count 4) and  
3 that he then transferred funds from that entity to his employer (Count 5).

4 The defendant was arrested on September 9, 2016 and was released under Pretrial  
5 Services supervision. A November trial date was set, and September 30, 2016 was set as the  
6 deadline for filing pretrial motions. On October 7, 2016, a status hearing was held. At that  
7 hearing, the trial was continued to February 27, 2017, and a new pretrial motions cutoff date  
8 (November 22, 2016) was set, limited to motions that could not have been filed prior to  
9 September 30, 2016.

10 At his initial appearance, at the status conference, and at all times until December 19,  
11 2016, the defendant was represented by prior counsel. No pretrial motions were filed prior to  
12 either of the pretrial motions cutoff dates.

13 On December 21, 2016, the defendant retained his current counsel. On December 22,  
14 2016, current counsel filed a motion for leave to substitute as counsel in the case. The motion  
15 was granted on January 5, 2017.

16 The discovery materials provided to the defendant's prior counsel totaled approximately  
17 12,000 Bates-numbered pages, plus additional materials in native format.

18 Based on the foregoing, the court makes the following FINDINGS AND  
19 CONCLUSIONS:

20 1. Absent an order from the court, defendant's current counsel is precluded from filing  
21 pretrial motions, as the deadline for filing pretrial motions has passed. The government objects  
22 to setting a new deadline for the filing of pretrial motions, as the original pretrial motions  
23 deadline had already been continued once before. Dkt. # 24. Weighing the ends of justice,  
24 however, the Court concludes that it is appropriate to establish a new pretrial motions deadline  
25 of March 3, 2017, in order to give defendant's current counsel the opportunity to file pretrial  
26 motions. This deadline will not be continued a third time.

27 2. Current defense counsel has exercised due diligence, in promptly filing the motion for  
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1 permission to substitute, in promptly seeking access to the discovery that had been provided to  
2 prior counsel, and in meeting with the government to become familiar with the case shortly after  
3 the motion for permission to substitute counsel was granted;

4       3. The time remaining between now and the current trial date, approximately six weeks,  
5 is insufficient to permit defendant's current counsel to conduct a meaningful review of the  
6 additional discovery, to locate and interview witnesses, to identify areas where expert  
7 consultation or testimony may be appropriate, and to conduct other preparatory work associated  
8 for defending a case involving complex financial records.

9       4. The case is so complex, due to the nature of the prosecution, that it is unreasonable to  
10 expect adequate preparation for trial, with the exercise of due diligence, within the time limits  
11 established by the Speedy Trial Act, 18 U.S.C. §3161(h)(7)(B)(iv).

12       5. Failure to grant a continuance in this case would likely result in a miscarriage of  
13 justice because the defendant would be denied the reasonable time necessary for effective  
14 preparation, taking into account the exercise of due diligence, 18 U.S.C. § 3161(h)(7)(B)(i).

15       6. The court finds that the ends of justice will best be served by a continuance and  
16 outweigh the best interests of the public and the defendant in a speedier trial, within the meaning  
17 of 18 U.S.C. §3161(h)(7)(A).

18       7. Defendant has filed a waiver of speedy trial in support of this motion.

19       THE COURT FURTHER FINDS, pursuant to 18 U.S.C. §3161(h)(7)(B)(iv) and 18  
20 U.S.C. § 3161(h)(7)(A), that the requested period of delay is reasonable.

21       THE COURT FURTHER FINDS, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), that the ends  
22 of justice will best be served by a continuance and that the ends of justice outweigh the best  
23 interests of the public and the defendant in a speedier trial.

24       THE COURT FURTHER FINDS that the additional time requested, between the current  
25 trial date (February 27, 2017) and the new trial date (June 12, 2017) is necessary to provide  
26 counsel the reasonable time necessary to prepare for trial.

1 NOW, THEREFORE, THE COURT ORDERS as follows:

2 1. The trial is continued until June 12, 2017, at 9:00 a.m.;

3 2. The time between February 27, 2017 and the new trial date shall be excluded in

4 computing the time within which a trial must be held pursuant to 18 U.S.C. § 3161, *et seq.*; and

5 3. The parties shall be permitted to file pretrial motions by not later than March 3, 2017.

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8 DATED this 24th day of January, 2017.

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11 Robert S. Lasnik  
12 United States District Judge